



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/174220

PRELIMINARY RECITALS

Pursuant to a petition filed May 10, 2016, under Wis. Admin. Code, §DHS 10.55, to review a decision by Milwaukee Enrollment Services in regard to the Family Care Program (FCP), a hearing was held on June 2, 2016, at Milwaukee, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether the agency correctly determined petitioner's monthly cost share.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

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Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner receives services under the FCP. By a notice dated December 17, 2015, the agency informed petitioner that she would have a monthly cost share of \$238.89 beginning January 1, 2016. The cost share was based upon petitioner's monthly income of \$1,624.89 and monthly rent of \$750 plus utilities.
3. The agency later approved a cost share reduction to \$213.89 retroactive to February 1, 2016 because petitioner's rent increased to \$775.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

Wis. Stat., §46.286(2)(a), provides that an FCP recipient must pay a cost share based upon income and certain expenses. Wis. Admin. Code, §DHS 10.34(3)(b) provides that cost of care is determined by taking the institutionalized person's income, then making several deductions. The first deduction is a personal needs allowance as provided under 42 C.F.R. §435.726(c). That personal needs allowance is \$913, as set out in the MA Handbook, App. 39.4.2. Another deduction is special housing expenses for costs above \$350 per month. MA Handbook, App. 28.8.3.1. A third deduction is for out-of-pocket medical/remedial expenses. Handbook, App. 15.7.3.

As a first point, I note that petitioner's appeal is untimely. The notice of the change in cost share was sent on December 17, 2015, effective January 1, 2016. An appeal concerning an FCP issue must be filed within 45 days of the effective date of the action. Wis. Admin. Code, §10.55(3). The notice informed petitioner that she needed to appeal by February 16, 2016 if she wished to do so. This appeal was filed on May 10, 2016, and thus was filed untimely. Generally if an appeal is filed untimely the Division of Hearings and Appeals does not have jurisdiction to review the merits of the case. Nevertheless, I will look at the cost share issue because it is ongoing, and if the cost share is calculated incorrectly it makes no sense to require a person to keep paying the incorrect amount.

That said, I can find no error in the way the cost share was determined. The agency correctly gave the \$913 personal needs allowance and a \$498 special housing allowance based upon petitioner's rent of \$775 plus \$73 monthly for electricity. Petitioner has no out-of-pocket medical expenses. That resulted in a monthly cost share of \$213.89.

Petitioner testified that she simply does not have enough money to pay her expenses, which also include car expenses, burial expenses, life insurance, and back taxes. Those expenses are not covered in the cost share determination, and the Division of Hearings and Appeals does not have authority to grant exceptions to the mandated calculations. I must conclude that petitioner's cost share is determined correctly.

CONCLUSIONS OF LAW

The agency correctly determined petitioner's monthly FCP cost share using the legally mandated formula.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 6th day of June, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 6, 2016.

Milwaukee Enrollment Services
Office of Family Care Expansion
Health Care Access and Accountability